Supreme Court, U.S.
FILED

961980 MAR 19 1997

No. OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1996

JOHN L. DEL BUONO

Petitioner

v.

PATRICIA REYNOLDS WEIGEL,
RICHARD F.X. REGAN, ESQ.,
THE LAW FIRM OF HAYDEN, PERLE AND SILBE,

Respondents

On Petition For Writ of Certiorari
United States Court of Appeals
for the Third Judicial Circuit

PETITION FOR WRIT OF CERTIORARI

John L. Del Buono
c/o 17 Schirra Drive
Wanaque, New Jersey 07465
Petitioner

39 pp

QUESTIONS PRESENTED FOR REVIEW

1 Did the appellate court err in affirming, without opinion, the decision of the district court which totally ignored the State Constitution's prohibition on "second bite of the apple" and all recorded state cases on that "Entire Controversy Doctrine" issue, in an action governed entirely by state law and only brought into federal court due to diversity of citizenship?

2. Did the appellate court err in affirming, without opinion, the decision of the district court granting the involuntary dismissal of a mandatory Counterclaim (N.J.Sup.Ct.Civil Rule 4:7-1 and F.R.C.P. Rule 13), which demanded trial by jury (N.J.Sup.Ct.Civil Rule 4:35-1 and F.R.C.P. Rule 38)?

3. Did the appellate court err in affirming, without opinion, the decision of the district court granting the involuntary dismissal of the Answer to the Complaint which demanded trial by jury (N.J.Sup.Ct.Civil Rule 4:35-1 and F.R.C.P. Rule 38)?

4. Did the appellate court err in affirming, without opinion, the decision of the district court that violated RPC Rule 3.7 which precludes a law firm from continuing the litigation once they have been named a defendant in an action?

5. **Did the appellate err in the affirming, without opinion, the decision of the district court denying the Petitioner his Constitutional right to a jury trial that was timely demanded?**

TABLE OF APPENDIX

	Appx Page Number
Judgment Order of 10/22/96 appealed	001-002
Supplementary Order of 11/18/96 appealed	003
Order of 01/22/97 granting extension to file petition for certiorari	004
Appellant's Brief, 3rd Cir., #96-5234 & 96-5269	005-030

STATEMENT OF JURISDICTION

1. This court has jurisdiction to review on the judgment certiorari, the judgment order of the U.S. Court of Appeals for the 3rd Circuit dated October 22, 1996 (Appx. 001-002) and its supplementary order dated November 18, 1996 (Appx. 003), under 28 US Code Section 1254 (1) and S.C. Rule 10(a). Extension of time to file Petition for Certiorari was granted January 22, 1997 (Appx. 004)

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED IN THE CASE

2. New Jersey Constitution, Art 6, Section 3, Par 4 (Appx 013)

"Subject to rules of the Supreme Court, the Law Division and the Chancery Division shall each exercise the powers and functions of the other divisions when the ends of justice so require, and legal and equitable relief shall be granted in any cause so that all matters in controversy between the parties may be completely determined."

3. NJ Sup. Ct. Civil Rule 4:30A, (Appx 013)

"ENTIRE CONTROVERSY DOCTRINE. Non-joinder of claims or parties required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine...."

4. N.J. Rules of Professional Conduct RPC 3.7 Lawyer As Witness. (Appx 010)

"*(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:*

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by RPC 1.7 or RPC 1.9."

5. Trial by jury in civil actions is constitutionally guaranteed, and N.J. Sup. Ct. Civil Rule 4:35-1 and F.R.C.P. Rule 38 both provide for civil jury trials

STATEMENT OF THE CASE

6. Two separate civil actions entitled Patricia Reynolds Weigel (formerly Patricia Reynods) v. John Lucien Del Buono were instituted in the U.S. District Court for New Jersey, 87-CV-02398 (MTB) & 95-CV-02133 (MTB), both naming the parties and seeking the same relief. Both cases were governed entirely by state law, because the sole basis for federal jurisdiction was diversity of citizenship. For whatever reason, or none, the attorneys in 87-CV-02389 failed to sign the settlement agreement within the time ordered by Judge Barry (Appx. 009). Instead of renewing or reclaiming 87-CV-02389, Plaintiff's attorneys chose to take a "second bite of the apple" by instituting 95-CV-02133, which is clearly prohibited by state law, by the doctrine of res judicata (Appx. 010), and by the "Entire Controversy Doctrine" (Appx. 012-014). While both the law and the doctrines are well settled in the state courts and the federal circuit court of appeals for the 3rd Circuit, the district court departed from such well settled law, and the 3rd Circuit sanctioned such departure by issuing its Judgment Order (Appx 001-002) without written opinion. The district court further departed from well settled

law by denying trial by jury, and trashing mandatory Counterclaim (Appx. 008). Said Judgment Order of the 3rd Circuit (Appx. 001-002) sanctioned such departures by a lower court as to call for this Court's exercise of its supervisory power to pursuant to Supreme Court Rule 10 (a).

7. The basis for federal jurisdiction in the court of first instance was diversity of citizenship , because Plaintiff had moved out of the state. The causes of actions were governed entirely by state law.

8. The sequence of events in the district court were set forth as Statement of the Case (Appx. 005-008).

9. The law, case law, and other authorities relied on are part of Appellant's informal brief, and set forth in Appendix 008-015 annexed hereto.

NOW WHEREFORE, petitioner respectfully prays that a writ of certiorari issue from this Court that requires the U.S. Court of Appeals for the Third Circuit to produce a certified record of appeals Nos. 96-5234 and 96-5259, so that it may inspect the proceedings and determine whether there have been any irregularities.

Dated: June 12, 1997

6/12/97

John Lucien Del Buono, Petitioner
c/o 17 Schirra Drive
Wanaque, New Jersey 07465
201-616-1399

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 96-5234 and 96-5259

PATRICIA REYNOLDS WEIGEL
(Formerly Patricia Reynolds)

v.

JOHN L. DEL BUONO

defendant/third party plaintiff

v.

RICHARD F.X. REGAN, ESQ.;
HAYDEN, PERLE AND SILBER;
JANE DOES, OFFICER, JANE DOES 1-25;
JOHN DOES, JOHN DOES 1-25

third-party defendants

John L. Del Buono,

Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civ. No. 95-02133)
District Judge: Honorable Maryanne Trump Barry

Submitted under Third Circuit LAR 34.1(a)
October 4, 1996

BEFORE: GREENBERG, LEWIS, and MCKEE, Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

ADJUDGED and ORDERED that the order of the district court entered March 29, 1996, be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT:

Circuit Judge

ATTEST:

P. Douglas Sisk, Clerk

DATED: OCT 22 1996

Certified as a true copy and issued in lieu of a formal mandate on November 18, 1996

Teste:

Clerk, U.S. Court of Appeals for the Third Circuit.

October 31, 1996

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 96-5234 and 96-5259

Re: WEIGEL v DEL BUONO v REGAN et al

PRESENT: GREENBERG, LEWIS and McKEE, Circuit Judges

1. Letter dated October 30, 1996, which the Court may wish to treat, as a Motion by Richard F.X. Regan, to correct a clerical error, and AMEND the Judgment Order filed October 22, 1996.

2. A copy of the October 22, 1996 Judgment Order is enclosed for your information.

Barbara Jacobson
Deputy Clerk - Direct Dial 597-8465

ORDER

The foregoing Motion ~~is denied~~ is granted to the end that in addition to affirming the order of the district court entered March 29, 1996, the judgment order shall be amended so that the order of March 13, 1996, from which the appellant has appealed also be and is hereby affirmed.

By the Court,

Circuit Judge

Dated: NOV 18 1996

cc: J.L. D.B.
RFXR

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

January 22, 1997

Mr. John L. Del Buono
17 Schirra Drive
Wanaque, NJ 07465

Re: John L. Del Buono
v. Patricia Reynolds Weigel, et al.
Application No. A-517

Dear Mr. Del Buono:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Souter, who on January 22, 1997, extended the time to and including March 21, 1997.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By

Clayton R. Higgins, Jr.
Assistant Clerk

John Lucien Del Buono
17 Schirra Drive
Wanaque, New Jersey 07465
201-616-1399

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case Numbers: 96-5234, 96-5259

Patricia Reynolds Weigel
v.
John Lucien Del Buono
John Lucien Del Buono, Appellant

Case Name: Weigel v Del Buono (MTB)

INFORMAL BRIEF

DIRECTIONS: Answer the following questions about your appeal to the best of your ability. Use additional sheets of paper if necessary. You need not limit your brief solely to this form, but you should be certain that any brief you file contains answers to the questions below. The court prefers short and direct statements.

1. **JURISDICTION**: What order(s) of the district court are you appealing?

a. Denying Appellant John Del Buono's Motion for Default Judgment against Patricia Weigel (a/k/a Reynolds).

b. Granting "3rd Party" Defendants' Motion to dismiss "3rd Party" Complaint pursuant to Rule 14 (a).

c. The "opinion of the court" that defendant has failed to honor his obligations under the settlement agreement, and is, therefore, in default.

d. The "opinion of the court" that, pursuant to the settlement agreement, defendant must pay Plaintiff $210,000 plus lawful interest calculated as of 1/1/87.

e. Plaintiff's motion for summary judgment is granted.

f. Judgment entered against defendant in the amount of $210,000 plus pre-judgment interest....

What is the date of the order(s)?

March 13, 1996 and March 29, 1996

When did you file your notice of appeal? 4/12/96 and 4/24/96. These two appeals were merged on an order of 5/2/96

2. **Statement of the case**: Explain the proceedings in the district court (i.e. what the district court did in deciding your case).

Appellant's understanding of the case is best shown by his Statement of Facts/Time Sequence; included in his Third Party Complaint, filed 11/27/95. He has REPEATEDLY asked Judge Maryann Trump Barry to explain HOW and WHY she differs from (or disputes) this Time Sequence.

Appellant is at a loss to understand what the district court did in deciding anything with regard to the underlying action.

a. Patricia Weigel filed a complaint, and Appellant filed a countercomplaint; which was returned by (Court Clerk) Edith Jazman stating that she REFUSED to take the filing, and that- in order for her to 'consent' to take the filing- it must be filed as a third party complaint; which was later dismissed because Judge Maryann Trump Barry stated that her own law clerk was wrong! Unfortunately, Appellant is the ONLY one who was further damaged because Judge Maryann Trump Barry and her own clerk don't agree on points of law. But, then again, is Jazman a judge, or a clerk? If she is a clerk, what happens when she IRREPARABLY damages a countercomplaint? WHO is responsible for what a clerk does?

b. HOW did Judge Maryann Trump Barry, hear a case for the Second Time without violating the rules pertaining to conflict of interest? But, then, again, what has the Honorable Trump Barry done but demonstrate Bias and Prejudice from the very beginning-except for the one time she vacated an unlawful order after Appellant filed his REFUSAL?

c. HOW did Judge Maryann Trump Barry make her decisions in the matter, without addressing the substantive issues-such as TRIAL BY JURY and the ENTIRE CONTROVERSY DOCTRINE? By what LAW did Judge Barry violate Appellant's rights as secured by the 7th Amendment to the Constitution FOR the united states of America, as CONFIRMED by the New Jersey Constitution?

d. Throughout the entire sequence of events, from the original filing of the SECOND 'bite of the apple', Appellant has been asking about ENFORCEMENT of the INCOMPLETE 'agreement'; when Appellant was specifically informed that EVERYBODY was in agreement with the terms. To date, MORE THAN FOUR YEARS LATER, Appellant has NOT received a copy of a completed agreement.

e. WHAT did Judge Maryann Trump Barry do when she received evidence of Richard F.X. Regan committing PERJURY? In his Affidavit of 2/29/96, exhibit 8 is the copy of a letter (dated 11/6/91), where Regan states: "Enclosed please find an executed copy of the Settlement Agreement

entered in the above-captioned matter". **THERE WAS NO COPY ENCLOSED**!

f. In the very same 2/29/96 Affidavit, Exhibit 14 shows signatures for Weigel and Wesdyk-BUT NO SIGNATURES FOR APPELLANT! Appellant never saw this document before receiving Exhibit 14 in March, 1996-MORE THAN FOUR YEARS LATE!

g. In Exhibit 15 of the same 2/29/96 Affidavit, Regan includes a copy of the agreement, with Weigel's Signature; accompanied by Regan's and Wesdyk's signature. The only problem is that this document doesn't even have room for Appellant's signature. Just how many agreements were floating around, and what terms were contained in each? APPELLANT NEVER SAW THOSE SIGNATURES-EVER-UNTIL HE RECEIVED THE SIGNED 2/29/96 Affidavit; MORE THAN FOUR YEARS LATE!

h. Appellant first saw the Weigel signature ON/ABOUT 9/94 (Exhibit 1 of the 2/29/96 Affidavit). THREE YEARS LATE; and certainly beyond the scope of the original

offer which he had long-since withdrawn by his demands for true copies in 14 consecutive letters from 8/20/91 to 9/23/92. See Exhibits 7.1 to 7.14 of Appellant's Counterclaim.

i. Judge Maryann Trump Barry NEVER addressed the issue of HOW she denied the 'Motion for Default Judgment'; when-in fact- there was NO motion for her to deny. The Default judgment was entered CLERICALLY; and it was NOT in her jurisdiction to overturn that without FINDINGS OF FACT OR CONCLUSIONS OF LAW (which she failed to provide).

j. When we continue the counterclaim and default (because they were never LAWFULLY addressed), Regan and Losito become FACT WITNESSES; and may NOT act as lawyers. See New Jersey Rule 3.7. By their continued actions; helped, aided and abetted by Judge Maryann Trump Barry; the Court was IMPROPERLY SET!

What is so bizarre is an article in the Star Ledger, dated 5/12/96, Section 1, pg. 47, where the Federal Court has already found the firm of Hayden, Perle and Siber had acted

improperly for the very same reasons. It seems that the law firm wants a 'SECOND BITE OF THE APPLE', as well.

What we have is Richard F.X. Regan providing proof of his own PERJURY and Judge Maryann Trump Barry HELPING, AIDING AND ABETTING CRIMINAL BEHAVIOR BY OFFICERS OF THE COURT; to knowingly, willfully, maliciously, intentionally and intelligently violate Appellant's fundamental, unalienable rights; under color of law, as part of an ongoing chain of events, under public policy and custom; that shocks the conscience of everybody who has an organ.

To summarize, there is NOTHING on the record to show how Judge Maryann Trump Barry made ANY of her decisions, so there is nothing procedurally correct from the very beginning of this second 'BITE OF THE APPLE'; in violation of the **RES JUDICATA AND THE LAW OF THE CASE** Doctrines.

Appellant was brutally abused, harassed, persecuted and terrorized by a concerted effort of various members of the 'BAR'; all of whom took oaths to uphold and defend the

Constitution as Supreme Law. The only question becomes: WHEN DID THEY LIE? When they took their oaths, or when they violated Appellant's Rights?

Appellant is well aware that the purpose of an appeal is to determine judicial error. How can that be done when Judge Maryann Trump Barry conducted no TRIAL BY JURY; and when Judge Maryann Trump Barry simply ignored the Entire Controversy Doctrine?

Since Richard F.X. Regan signed his AFFIDAVITS; and is an officer of the court, a 'public servant' in a position of public trust', what is this court going to do with its own officer who betrays their public trust? Are you going to reward him, or are you going to charge and prosecute him with the FULL PENALTIES OF PERJURY?

Appellant is asking these questions of this Appellate Court, because he believes that-by the very fact that Judge Maryann Trump Barry FAILED TO DO HER JOB- she provided evidence of judicial error; and her decision MUST be

reversed. The only alternative as to WHY she failed to do her job is just too terrible to contemplate.

3. **Statement of facts**: Explain the facts and events that caused you to file your complaint in the district court.

Appellant did NOT file the original complaint; Richard F.X. Regan and the "Firm" of Hayden, Perle & Silber, did for Patricia Reynolds Weigel. This is an ongoing chain of events that were resolved by Maryann Trump Barry when she dismissed the previous action (THE FIRST 'BITE OF THE APPLE') on 12/16/94. Patricia Reynolds Weigel then filed her SECOND suit on Mar. 8, 1995 (THE SECOND 'BITE OF THE APPLE') Appellant filed his countercomplaint on 10/27/95; but it was ARBITRARILY AND UNILATERALLY returned by (court clerk) Edith Jazman; for format. See S.E.C. v. Elliot, Infra.

What boggles the Appellant's mind, however, is Judge Maryann Trump Barry's blatant violations of everything the District Court stands for. She denied Appellant the very

access to his court; from the very beginning with the 'misunderstanding' about the **ENTIRE CONTROVERSY DOCTRINE**, to the **TRIAL BY JURY**; all along the way simply IGNORING her CONTRACTUAL OBLIGATIONS.

Appellant paid his filing fee for a jury trial. When Judge Barry was assigned to the matter, Judge Maryann Trump Barry became a REPRESENTATIVE to that contract. At the very best, Judge Maryann Trump Barry BREACHED that contract. It is possible that she committed an act of CONSTRUCTIVE FRAUD; by deliberately setting out to help the lawyers to cheat and deceive litigants that were not 'represented by counsel'.

LEAVE US NOT FORGET THE PENALTIES FOR PERJURY

Since the very beginning, Appellant has been asking Judge Maryann Trump Barry WHY she is breaking the law; as she violates her oath to uphold and defend the Constitution FOR the USA. Judge Maryann Trump Barry has NEVER responded; either with Findings of Fact or Conclusions of Law.

It seems that Judge Maryann Trump Barry has absolutely no respect for the Canons of Judicial Conduct; which require that judges must not only BE impartial, they must APPEAR IMPARTIAL to the disinterested observer.

The original settlement order was to have been entered into when Judge Maryann Trump Barry issued an order on 4/1/91 to have a Settlement Agreement completed and executed within sixty (60) days of the order filed on 4/3/91. To date, MORE THAN FIVE (5) YEARS LATER, Appellant has NEVER received a copy of a fully executed agreement; thus VOIDING the agreement BEFORE it could be executed. THERE IS NO AGREEMENT, BECAUSE OF PATRICIA REYNOLDS WEIGEL'S INABILITY TO EXECUTE ONE WITH ALL NAMED PARTIES. Just so there is no mistake, the 'agreement' was to have been made between:

a.	Charles Ferraioli	
b.	Adrian Wesdyk	
c.	Daniel Freifeld	
d.	Richard F.X. Regan	**SIGNED 10/4/91**
e.	Adolph Galluccio	**SIGNED 8/7/91**
f.	Robert Moraff	
g.	Andrew Goldstein	**SIGNED 9/17/91**

h. Patricia Reynolds **SIGNED 10/24/91**

Thank you, Richard F.X. Regan; for proving to the Court that NONE of the signatures were made within the time limits of Judge Maryann Trump Barry's order of **6/3/91.**

Contrary to Judge Maryann Trump Barry's arbitrary, biased, prejudiced and WRONGFUL 'determination', there was NO agreement; so Appellant is well within his rights to seek a REFUND of all monies he already paid. Appellant is also entitled to recompense AT RICHARD F.X. REGAN'S BILLING RATE, for his time in pursuing and defending this ATROCITY/CONSPIRACY/EXTORTION/ CRIME -since 1987.

4. **Statement of related cases**: Have you filed an appeal in this case before? If so, give title of case and docket number.

Appellant has NOT filed an appeal before; but it must be remembered that Judge Maryann Trump Barry VACATED her previous order, dated 12/16/94; and Richard F.X. Regan 'short-circuited' the process by filing a second 'BITE OF THE APPLE'. What still boggles Appellant's mind is that Judge Maryann Trump permitted it! As a matter of fact, it may be

argued that Judge Maryann Trump Barry actually 'opened the door'; by giving LEGAL ADVISE encouraging Regan/Losito to file the second suit for Breach of Contract in her opinion.

Do you have any cases related to this case pending in the district court or the court of appeals? If so, give title of case and docket number **NO**

5. Did the district court incorrectly decide the facts of your case? **YES**

If so, what facts?

a. Judge Maryann Trump Barry decided that there was an existing agreement when, by her own order, NO SUCH ORDER existed.

b. Determination of whether or not there was an agreement in place, and whether that agreement was entered into knowingly, willingly, intelligently, intentionally, voluntarily, and TIMELY; was for the ultimate 'TRIER OF FACT' - the JURY.

c. By allowing the 'second bite of the apple', Judge Maryann trump Barry totally ignored **RES JUDICATA AND THE LAW OF THE CASE.**

d. By denying Appellant his Right to Trial by Jury, Judge Maryann Trump Barry denied him effective access to his Court; and helped, aided and abetted a FRAUD ON THE COURT.

e. BY permitting these LAWYERS to continue participating when they were NAMED DEFENDANTS, Judge Maryann Trump Barry violated the Canons of Judicial Conduct; as repeated in the Rules of Professional Conduct (RPC). **See RPC 3.7**

f. Judge Maryann Trump Barry TOTALLY ignored the Entire Controversy Doctrine.

g. Richard F.X. Regan committed WILLFUL PERJURY. As an officer of the court in a position of public trust, he has committed a FRAUD ON THE COURT; for which he must be DISBARRED. By his own submissions, he PROVED that there was no agreement; and that his own client signed the documents THREE MONTHS LATE - after the expiration imposed by Judge Maryann Trump Barry's order.

6. Did the district court apply the wrong law (either cases or statute)?

YES

If so, what law do you want applied?

Appellant includes his Assertion of Rights by reference, as if fully rewritten herein, and DEMANDS this Court take judicial notice of ALL his previously submitted papers. See Exhibit A

Appellant is NOT a lawyer; and DEMANDS wide latitude. "Pro Se complaints, according to the Supreme Court, are held to less stringent standards than formal pleadings by lawyers." Jenkins v. McKeithen, 395 US 411 (1969); Haines v. Kerner, 92 S.Ct. 594 (1972), cited in Hughs v Rowe 449 US 5, 101 S. Ct 173, 176 (1980)

What is more important, however, is Appellant's DEMANDS for justice; because he is a BELLIGERENT CLAIMANT IN PERSON.

"The privilege against self incrimination is neither accorded to the passive resistant, nor the person who is

ignorant of his rights, not to one indifferent thereto. It is a fighting clause. Its benefits can be retained only by sustained combat. It cannot be claimed by an attorney or solicitor. It is only valid when insisted upon by a belligerent claimant in person." US v. Johnson 76 F. Supp. 538.

Contrary to what Ms. Jazman believes, Appellant canNOT be penalized because he is NOT a lawyer; but must be afforded the good offices of the court.

When interpreting papers from persons not represented by attorney, the court is instructed to use common sense to determine what relief the party desires. S.E.C. v. Elliot 953 F.2d 1560 (11th Cir. 1992).

PERJURY - In criminal law, the willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court, or in an affidavit, or otherwise, such assertion being material to the issue or point of inquiry and known to such witness to be false.

A false statement knowingly made in a proceeding in a court of competent jurisdiction or concerning a matter wherein an affiant is required by law to be sworn as to some matter material to the issue or point in question. Henry v. Deen 310 N.C. 75, S.E. 2d, 326, 335.

A person is guilty of perjury if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true. Model Penal Code, Section 241.1 See also 18 U.S.C.A. Sections 1621, 1623.

TWO WITNESS RULE - This rule requires that falsity element of a perjury conviction be supported by either direct testimony of two witnesses or by direct testimony of one witness plus independent corroborating evidence. People v. Fueston Colo. App., 717 P.2d 978, 990, See also Treason.

ENTIRE CONTROVERSY ARGUMENT

The case at bar, filed by Patricia Reynolds Weigel and her attorneys, Richard F.X. Regan, the "Firm" of Hayden,

Perle, & Silber and Carl M. Losito, of Counsel, is the second attempt to litigate issues which arose out of the previous case, the purported Settlement Agreement, **Civil Action No. 87-2389**, which was vacated by the lower Court on December 16, 1994.

Under the New Jersey Entire Controversy Doctrine of claim preclusion, a party must litigate all aspects of a controversy in a single legal proceeding and is precluded from subsequently litigating related claims, even those capable of independent adjudication. The doctrine applies to both subsequent actions asserting different legal theories (i.e.--breach of contract) and those requesting alternative relief (i.e.--breach of contract) and precludes all claims arising out of the same controversy that could have been raised in the earlier action. New Jersey Court Rule 4:30A. See also, **Cogdell v. Hospital Center at Orange, 116 N.J. 7 (1989).**

According to the dictates of the full faith and credit clause, 28 U.S.C. Section 1738, this Court must apply New

Jersey law to determine the preclusive effect of the Entire Controversy Doctrine. **Printing Mart-Morristown, Inc. v. Rosenthal. 650 F.Supp. 144, 1774 (D.N.J. 1987)**. In **Printing Mart-Morristown, Inc. v. Rosenthal,** the lower Court for the District of New Jersey held:

".... under New Jersey Law, claim preclusion is governed by the "entire controversy doctrine" and a broad policy against claims splitting. [Citation omitted]. The doctrine, strictly adhered to by the New Jersey Courts, mandates that a Plaintiff "must seek complete relief or vindication of the wrong he charges" in a single proceeding and precludes subsequent litigation of related claims, even those capable of independent adjudication [citation omitted]. **Printing Mart-Morristown, Inc. v. Rosenthal. at 1447."**

The same lower Court went on to state:

"The entire controversy doctrine precludes subsequent litigation not only of those claims previously litigated, but all of the claims arising out of the same controversy that could have been raised in the earlier action. Furthermore, the entire

controversy doctrine applies both to subsequent actions asserting different legal theories and those requesting alternative relief." [citation omitted], id.

The Entire Controversy Doctrine is so "fundamental...[to] judicial administration' in New Jersey that it is acknowledged in the State Constitution. **, Cogdell v. Hospital Center at Orange, . 1172-1173 (citing New Jersey Constitution, Article 6, Section 3, Paragraph 4).** The doctrine has been partially codified in New Jersey Court Rule 4:30A, which states

Rule 4:30A. ENTIRE CONTROVERSY DOCTRINE Non-joinder of claims or parties required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine....

The doctrine is intended to promote judicial economy, administrative efficiency and fairness to litigants by requiring the conclusions of entire controversies in single actions embracing all persons with a recognizable interest in the

controversy. Crispin v. Volkswagenwerk, A.G., 476 A.2d 250, (N.J. 1994); In re: Integrity Insurance Company, 573 A.2d 928, 939 (N.J. Supp. App. Div. 1990).

It is undisputed that the underlying dispute, the alleged Settlement Agreement, originated between Patricia Reynolds Weigel and John Del Buono. The purported Settlement Agreement was never fully executed and the Lower Court made reference to that in its December 16, 1994 Order vacating the Settlement Agreement because it was never made part of the record as such and was never incorporated into an Order of the Court. In order to consummate the Settlement Agreement, the Lower Court, pursuant to April 1, 1991 Order, gave Plaintiff and her attorneys sixty (60) days to consummate a fully executed Settlement Agreement. They failed to do so. From that time forward, the Lower Court has been mis-lead by the representations on paper, in pleadings and orally, by Plaintiff and her attorneys, Richard F.X. Regan, the "Firm" of Hayden, Perle & Silber and Carl M. Losito of Counsel.

Under New Jersey Law, res judicata or claim preclusion applies when (1) the judgment in the first action is valid, final and on the merits (i.e.--December 16, 1994 Order); (2) there is identity of the parties, or the parties in the second action are in privity with those in the first action; (3) the claim in the later action grows out of the same transaction or occurrence as the claim in the first action. **Jones v. Holvey, 29 F.3d 828, (3rd Cir. N.J. 1994).**

The New Jersey Supreme Court has directed courts to consider: (1) whether the acts complained of and the demand for relief are the same (that is, whether the wrong for which redress is sought is the same in both actions); (2) whether the theory of recovery is the same; (3) whether the witnesses and the documents necessary at the trial are the same (that is, whether the same evidence necessary to maintain the second action would support the first); and (4) whether the material facts alleged are the same. **Culver v. Insurance Co. of North America**, 115 N.J. 451, 559 A.2d 400, 406 (1989)

(quoting United States v. Athlone Industries, 746 F.2d 977, 984 (3rd Cir. 1984).

Plaintiff alleges there are no issues of material fact. They failed to inform the Lower Court that they were in Default for failure to respond timely and responsively. The lower Court accepted, in error, the Motions for Summary Judgment by the Plaintiff and her attorneys. Plaintiff's attorneys, being in Default, made those Motions in violations of the Rules of Professional Conduct and the Federal Rules of Civil Procedures.

Issues preclusion "precludes the re-litigation of an issue that has been put in issue and directly determined adversely to the party against whom estoppel is asserted". Melikian v. Corradetti , 791 F2d 274, 277 (3rd Cir. 1986) (Citing New Jersey-Philadelphia Presbytery of the Bible Presbyterian Church v. New Jersey State Board of Higher Education, 654 F.2d 868, 876, (3rd Cir. 1981); State v. Gonzalez, 75 N.J. 181, 380, A. 2d 128 (1977).

In **Cogdell v. Hospital Center at Orange, at 116 New Jersey 7 (1989)** we took the next step and established a mandatory party-joinder rule similar to the mandatory claim-joinder rule. We noted that "consistent with the entire controversy doctrine, justice requires that it be applied only prospectively and to all cases not already on appeal." Id. at 28. As a result of the holding in Cogdell, we promulgated Rule 4:30A, which became effective on September 4, 1990.

At 662 A. 2d 536, 142 N.J. 336 Page 336, Mortgageling Corp. v. Commonwealth Land Title Ins. (S.Ct. 1995)

One of the underpinnings of the entire controversy doctrine, in addition to fairness to the parties, is fairness to the system of judicial administration. "Judicial economy and efficiency--the avoidance of waster and delay--remain constants in the application of the entire controversy doctrine. Fragmented and multiple litigation takes its toll on not only the parties but the judicial institution and the public". Cogdelll, supra, 116 N.J. at 23. Each jurisdiction is free to access the importance of such values. Our own Committee on Civil

Practice recently recommended that the Court reconsider the principles of the entire controversy doctrine because it was not convinced that the doctrine necessarily produced judicial efficiency. The Committee was concerned that in some instances the doctrine would produce inefficiencies in the conduct of complex litigation. 1994 Report of the Supreme Court Committee on Civil Practice, 136 N.J.L.J. 581, 589 (Supp. Feb. 14, 1994. Hence, the entire controversy doctrine is hardly one of either uniform application or universal application.

7. Are there any other reasons why the district court's judgment was wrong? If so, briefly state these reasons.

Yes, For reasons that have been repeatedly communicated (above), Judge Maryann Trump Barry not only made some disastrous decisions, she FAILED to justify them as a matter of law. The most serious INDICTMENT of her biased handling of this matter can be stated by the fact she FAILED to address any of the Appellant's questions as a matter of law; that she FAILED to provide him with his trial by

Jury AS OF RIGHT; and that she allowed a "SECOND BITE OF THE APPLE". District Judges are supposed to know better.

8. What action do you want the Court of Appeals to take in this case?

REVERSE all of the decisions made in the lower court order; and find for the Appellant as a matter of Law. Sanction Carl M. Losito, Richard F.X. Regan, and the "Firm" of Hayden, Perle & Silber for conduct unbecoming an officer of the court and in violation of RPC; and RESTORE default judgments against third-party defendants AS A MATTER OF JUSTICE as well as of law. In effect, follow the precepts of S.E.C. v. Elliot; use COMMON SENSE to figure out what relief Appellant requires; and award it to him.

/S/
John Del Buono